

Republic of the Philippines  
**SUPREME COURT**  
Manila

FIRST DIVISION

**G.R. No. 77648 August 7, 1989**

**CETUS DEVELOPMENT, INC.**, petitioner,  
vs.  
**COURT OF APPEALS and ONG TENG**, respondents.

**G.R. No. 77647 August 7, 1989**

**CETUS DEVELOPMENT, INC.**, petitioner,  
vs.  
**COURT OF APPEALS and EDERLINA NAVALTA**, respondents.

**G.R. No. 77649 August 7, 1989**

**CETUS DEVELOPMENT, INC.**, petitioner,  
vs.  
**COURT OF APPEALS and JOSE LIWANAG**, respondents.

**G.R. No. 77650 August 7, 1989**

**CETUS DEVELOPMENT, INC.**, petitioner,  
vs.  
**COURT OF APPEALS and LEANDRO CANLAS**, respondents.

**G.R. No. 77651 August 7, 1989**

**CETUS DEVELOPMENT, INC.**, petitioner,  
vs.  
**COURT OF APPEALS and VICTORIA SUDARIO** respondents.

**G.R. No. 77652 August 7, 1989**

**CETUS DEVELOPMENT, INC.**, petitioner,  
vs.  
**COURT OF APPEALS and FLORA NAGBUYA** respondents.

**MEDIALDEA, J.:**

This is a petition for review on *certiorari* of the decision dated January 30, 1987 of the Court of Appeals in CA-GR Nos. SP-07945-50 entitled, "Cetus Development, Inc., Petitioner vs. Hon. Conrado T. Limcaoco, Presiding Judge, Regional Trial Court of Manila, Branch Ederlina Navalta, et. al., respondents.

The following facts appear in the records:

The private respondents, Ederlina Navalta, Ong Teng, Jose Liwanag, Leandro Canlas, Victoria Sudario, and Flora Nagbuya were the lessees of the premises located at No. 512 Quezon Boulevard, Quiapo, Manila, originally owned by the Susana Realty. These individual verbal leases were on a month-to month basis at the following rates: Ederlina Navalta at the rate of P80.50; Ong Teng at the rate of P96.10; Jose Liwanag at the rate of P40.35; Leandro Canlas at the rate of P80.55; Victoria Sudario at the rate of P50.45 and Flora Nagbuya at the rate of P80.55. The payments of the rentals were paid by the lessees to a collector of the Susana Realty who went to the premises monthly.

Sometime in March, 1984, the Susana Realty sold the leased premises to the petitioner, Cetus Development, Inc., a corporation duly organized and existing under the laws of the Philippines. From April to June, 1984, the private respondents continued to pay their monthly rentals to a collector sent by the petitioner. In the succeeding months of July, August and September 1984, the respondents failed to pay their monthly individual rentals as no collector came.

On October 9, 1984, the petitioner sent a letter to each of the private respondents demanding that they vacate the subject premises and to pay the back rentals for the months of July, August and September, 1984, within fifteen (15) days from the receipt thereof. Immediately upon the receipt of the said demand letters on October 10, 1984, the private respondents paid their respective arrearages in rent which were accepted by the petitioner subject to the unilateral condition that the acceptance was without prejudice to the filing of an ejectment suit. Subsequent monthly rental payments were likewise accepted by the petitioner under the same condition.

For failure of the private respondents to vacate the premises as demanded in the letter dated October 9, 1984, the petitioner filed with the Metropolitan Trial Court of Manila complaints for ejectment against the manner, as follows: (1) 105972-CV, against Ederlina Navalta (2) 105973-CV, against Jose Liwanag; (3) 105974-CV, against Flora Nagbuya; (4) 105975-CV, against Leandro Canlas; (5) 105976-CV, against Victoria Sudario and (6) 105977-CV, against Ong Teng.

In their respective answers, the six (6) private respondents interposed a common defense. They claimed that since the occupancy of the premises they paid their monthly rental regularly through a collector of the lessor; that their non-payment of the rentals for the months of July, August and September, 1984, was due to the failure of the petitioner (as the new owner) to send its collector; that they were at a loss as to where they should pay their rentals; that sometime later, one of the respondents called the office of the petitioner to inquire as to where they would make such payments and he was told that a collector would be sent to receive the same; that no collector was ever sent by the petitioner; and that instead they received a uniform demand letter dated October 9, 1984.

The private respondents, thru counsel, later filed a motion for consolidation of the six cases and as a result thereof, the said cases were consolidated in the Metropolitan Trial Court of Manila, Branch XII, presided over by Judge Eduardo S. Quintos, Jr. On June 4, 1985, the trial court rendered its decision dismissing the six cases, a pertinent portion of which reads, as follows:

The records of this case show that at the time of the filing of this complaint, the rentals had all been paid. Hence, the plaintiff cannot eject the defendants from the leased premises, because at the time these cases were instituted, there are no rentals in arrears.

The acceptance of the back rental by the plaintiff before the filing of the complaint, as in these case, the alleged rental arrearages were paid immediately after receipt of the demand letter, removes its cause of action in an unlawful detainer case, even if the acceptance was without prejudice.

x x x.

Furthermore, the court has observed that the account involved which constitutes the rentals of the tenants are relatively small to which the ejectment may not lie on grounds of equity and for humanitarian reasons.

Defendants' counterclaim for litigation expenses has no legal and factual basis for assessing the same against plaintiff.

WHEREFORE, judgment is hereby rendered dismissing these cases, without pronouncement as to costs.

Defendants' counterclaim is likewise dismissed.

SO ORDERED. (pp. 32-33, *Rollo*, G.R. No. 77647)

Not satisfied with the decision of the Metropolitan Trial Court, the petitioner appealed to the Regional Trial Court of Manila and the same was assigned to Branch IX thereof presided over by Judge Conrado T. Limcaoco (now Associate Justice of the Court of Appeals). In its decision dated November 19, 1985, the Regional Trial Court dismissed the appeal for lack of merit.

In due time, a petition for review of the decision of the Regional Trial Court was filed by the petitioner with the Court of Appeals. Said petition was dismissed on January 30, 1987, for lack of merit.

Aggrieved by the decision of the Court of Appeals, petitioner now comes to Us in this petition, assigning the following errors:

#### ASSIGNMENT OF ERRORS

I

RESPONDENT COURT OF APPEALS COMMITTED A GRAVE ABUSE OF DISCRETION, AMOUNTING TO LACK OF JURISDICTION, WHEN IT ERRED IN HOLDING THAT THE CAUSE OF ACTION FOR UNLAWFUL DETAINER IN THESE CASES DID NOT EXIST WHEN THE COMPLAINTS WERE FILED BECAUSE PRIVATE RESPONDENTS TENDERED, AND PETITIONER ACCEPTED, THE PAYMENT OF THE THREE (3) MONTHS RENTAL IN ARREARS WITHIN THE FIFTEEN (15) DAY PERIOD FROM PRIVATE RESPONDENTS' RECEIPT OF PETITIONER'S DEMAND LETTERS TO VACATE THE SUBJECT PREMISES AND TO PAY THE RENTALS IN ARREARS.

II

RESPONDENT COURT OF APPEALS COMMITTED A GRAVE ABUSE OF DISCRETION, AMOUNTING TO LACK OF JURISDICTION, WHEN IT ERRED IN AFFIRMING THE DISMISSAL OF THE COMPLAINTS IN THESE CASES NOTWITHSTANDING THE EXISTENCE OF VALID GROUNDS FOR THE JUDICIAL EJECTMENT OF PRIVATE RESPONDENT.

III

RESPONDENT COURT OF APPEALS COMMITTED A GRAVE ABUSE OF DISCRETION, AMOUNTING TO LACK OF JURISDICTION, WHEN IT ERRED IN HOLDING THAT THESE CASES ARE CLASSIC EXAMPLES TO CIRCUMVENT THE RENT CONTROL LAW. (pp. 164-165, *Rollo*, G.R. No. 77647)

The Court of Appeals defined the basic issue in this case as follows: whether or not there exists a cause of action when the complaints for unlawful detainer were filed considering the fact that upon demand by petitioner from private respondents for payment of their back rentals, the latter immediately tendered payment which was accepted by petitioner.

In holding that there was no cause of action, the respondent Court relied on Section 2, Rule 70 of the Rules of Court, which provides:

*Sec. 2. Landlord to proceed against tenant only after demand.* — No landlord or his legal representative or assign, shall be such action against a tenant for failure to pay rent due or to comply with the conditions of his lease, unless the tenant shall have failed to pay such rent or comply with such conditions for a period of fifteen (15) days or five (5) days in case of building, after demand therefor, made upon the tenant personally, or by serving written notice of such demand upon the person found on the premises, or by posting such notice on the premises if no persons be found thereon.

It interpreted the said provision as follows:

.....the right to bring an action of ejectment or unlawful detainer must be counted from the time the defendants failed to pay rent after the demand therefor. It is not the failure per se to pay rent as agreed in the contract, but the failure to pay the rent after a demand therefor is made, that entitles the lessor to bring an action for unlawful detainer. In other words, the demand contemplated by the above-quoted provision is not a demand to vacate, but a demand made by the landlord upon his tenant for the latter to pay the rent due if the tenant fails to comply with the said demand within the period provided, his possession becomes unlawful and the landlord may then bring the action for ejectment. (p. 28, , G.R. No. 77647)

We hold that the demand required and contemplated in Section 2, aforequoted, is a jurisdictional requirement for the purpose of bringing an unlawful detainer suit for failure to pay rent or comply with the conditions of lease. It partakes of an extrajudicial remedy that must be pursued before resorting for judicial action so much so that when there is full compliance with the demand, there arises no necessity for court action.

As to whether this demand is merely a demand to pay rent or comply with the conditions of the lease or also a demand to vacate, the answer can be gleaned from said Section 2. This section presupposes the existence of a cause of action for unlawful detainer as it speaks of "failure to pay rent due or comply with the conditions of the lease." The existence of said cause of action gives the lessor the right under Article 1659 of the New Civil Code to ask for the rescission of the contract of lease and indemnification for damages, or only the latter, allowing the contract to remain in force. Accordingly, if the option chosen is for specific performance, then the demand referred to is obviously to pay rent or to comply with the conditions of the lease violated. However, if rescission is the option chosen, the demand must be for the lessee to pay rents or to comply with the conditions of the lease and to vacate. Accordingly, the rule that has been followed in our jurisprudence where rescission is clearly the option taken, is that both demands to pay rent and to vacate are necessary to make a lessee a deforciant in order that an ejectment suit may be filed (*Casilan et al. vs. Tomassi*, L-16574, February 28, 1964, 10 SCRA 261; *Rickards vs. Gonzales*, 109 Phil. 423, *Dikit vs. Icasiano*, 89 Phil. 44).

Thus, for the purpose of bringing an ejectment suit, two requisites must concur, namely: (1) there must be failure to pay rent or comply with the conditions of the lease and (2) there must be demand both to pay or to comply and vacate within the periods specified in Section 2, Rule 70, namely 15 days in case of lands and 5 days in case of buildings. The first requisite refers to the existence of the cause of action for unlawful detainer while the second refers to the jurisdictional requirement of demand in order that said cause of action may be pursued.

It is very clear that in the case at bar, no cause of action for ejectment has accrued. There was no failure yet on the part of private respondents to pay rents for three consecutive months. As the terms of the individual verbal leases which were on a month-to-month basis were not alleged and proved, the general rule on necessity of demand applies, to wit: there is default in the fulfillment of an obligation when the creditor demands payment at the maturity of the obligation or at anytime thereafter. This is explicit in Article 1169, New Civil Code which provides that "(t)hose obliged to deliver or to do something incur in delay from the time the obligee judicially or extrajudicially demands from them the fulfillment of their obligation." Petitioner has not shown that its case falls on any of the following exceptions where demand is not required: (a) when the obligation or the law so declares; (b) when from the nature and circumstances of the obligation it can be inferred that time is of the essence of the contract; and (c) when demand would be useless, as when the obligor has rendered it beyond his power to perform.

The demand required in Article 1169 of the Civil Code may be in any form, provided that it can be proved. The proof of this demand lies upon the creditor. Without such demand, oral or written, the effects of default do not arise. This demand is different from the demand required under Section 2, Rule 70, which is merely a jurisdictional requirement before an existing cause of action may be pursued.

The facts on record fail to show proof that petitioner demanded the payment of the rentals when the obligation matured. Coupled with the fact that no collector was sent as previously done in the past, the private respondents cannot be held guilty of *mora solvendi* or delay in the payment of rentals. Thus, when petitioner first demanded the payment of the 3-month arrearages and private respondents lost no time in making tender and payment, which petitioner accepted, no cause of action for ejectment accrued. Hence, its demand to vacate was premature as it was an exercise of a non-existing right to rescind.

In contradistinction, where the right of rescission exists, payment of the arrearages in rental after the demand to pay and to vacate under Section 2, Rule 70 does not extinguish the cause of action for ejectment as the lessor is not only entitled to recover the unpaid rents but also to eject the lessee.

Petitioner correctly argues that acceptance of tendered payment does not constitute a waiver of the cause of action for ejectment especially when accepted with the written condition that it was "without prejudice to the filing of an ejectment suit". Indeed, it is illogical or ridiculous not to accept the tender of payment of rentals merely to preserve the right to file an action for unlawful detainer. However, this line of argument presupposes that a cause of action for ejectment has already accrued, which is not true in the instant case.

Petitioner likewise claims that its failure to send a collector to collect the rentals cannot be considered a valid defense for the reason that sending a collector is not one of the obligations of the lessor under Article 1654. While it is true that a lessor is not obligated to send a collector, it has been duly established that it has been customary for private respondents to pay the rentals through a collector. Besides Article 1257, New Civil Code provides that where no agreement has been designated for the payment of the rentals, the place of payment is at the domicile of the defendants. Hence, it could not be said that they were in default in the payment of their rentals as the delay in paying the same was not imputable to them. Rather, it was attributable to petitioner's omission or neglect to collect.

Petitioner also argues that neither is its refusal to accept the rentals a defense for non-payment as Article 1256 provides that "[i]f the creditor to whom the tender of payment has been made refuses without just cause to accept it, the debtor shall be released from responsibility by the consignment of the thing due." It bears emphasis that in this case there was no unjustified refusal on the part of petitioner or non-acceptance without reason that would constitute *mora accipiendi* and warrant consignment. There was simply lack of demand for payment of the rentals.

In sum, We hold that respondent Court of Appeals did not commit grave abuse of discretion amounting to lack of jurisdiction in its conclusion affirming the trial court's decision dismissing petitioner's complaint for lack of cause of action. We do not agree, however, with the reasons relied upon.

ACCORDINGLY, the petition for review on *certiorari* is hereby DENIED for lack of merit and the decision dated January 30, 1987 of respondent Court of Appeals is hereby AFFIRMED.

SO ORDERED.

*Narvasa, Cruz, Gancayco and Griño-Aquino JJ., concur.*

---

 [BACK](#)

[TOP](#) 